IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 8331 of 2007(P)

Against the order in I.A.1213/06 in
OS.205/1996 of MUNSIFF COURT, VADAKARA

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PETITIONER:

C.K.DHARMADAS, CHERUVALATH KELOTH,
AGED 58 YEARS, S/O.KRISHNAN, MERCHANT, VADAKARA
AMSOM DESOM, NOW RESIDING AT " SAI KRISHNA "
PALLIKKUNNU AMSOM DESOM, KANNUR DISTRICT.

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENTS:

1. CHERUVALTH KELOTH RAJAGOPALAN,
S/O.KRISHNAN, AGED 62 YEARS, RESIDING AT
KRISHNA KRIPA, NEAR GOVT.HIGHER SECONDARY SCHOOL,
NADAKKUTHAZHA, VADAKARA.

2. CHERUVALATH KELOTH KOUSALYA, AGED 76
YEARS, D/O.KRISHNAN, NO OCCUPATION, RESIDING AT
PALATHINDA VIDA PARAMBIL, VADAKARA AMSOM AND
DESOM, VADAKARA (P.O), KOZHIKODE DISTRICT.

3. C.K.RAGHAVAN, AGED 74 YEARS,
VELUTHA PARAMBATH HOUSE, VADAKARA AMSOM AND
DESOM, VADAKARA.

4. CHERUVALATH KELOTH RAMACHANDRAN,
AGED 72 YEARS, MERCHANT, RESIDING AT KRISHNA
DEEPTHI, NEAR KEERTHI TALKIES, VADAKARA AMSOM
AND DESOM, VADAKARA (P.O), KOZHIKODE DISTRICT.

5. CHERUVALATH KELOTH SAROJINI,
D/O.KRISHNAN, MERCHANT, AGED 69 YEARS,
RESIDING AT HILL VIEW (HOUSE),
KADALUNDY AMSOM DESOM, KOZHIKODE DISTRICT.

6. CHERUVALATH KELOTH MUKUNDAN,
S/O.KRISHNAN, MERCHANT AGED 67 YEARS, RESIDING
AT VELUTHA PARAMBATH, VADAKARA AMSOM AND DESOM,
VADAKARA(P.O), KOZHIKODE DISTRICT.

7. CHERUVALATH KELOTH SARASWATHI,
OCCUPATION NIL, AGED 66 YEARS, NEAR K.T.C.
OFFICE, C.A.ROAD, KOZHIKODE KASABA AMSOM DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

8. CHERUVALATH KELOTH PUSHPAVALLI
NO OCCUPATION, AGED 59 YEARS,
RESIDING AT KOLLARAM PANIKKAL,
AMBALAKULANGARA, VADAKARA (P.O),
KOZHIKODE DISTRICT.

9. CHERUVALATH KELOTH DEVAYANI,
NO OCCUPATION, AGED 54 YEARS,
RESIDING AT LAKSHMIVAS, VELLOOR AMSOM
KANDOTH DESOM, PAYYANNUR.

10. CHERUVALATH KELOTH DEVADASAN,
MERCHANT, AGED 53 YEARS, RESIDING AT NEAR
VADAKARA, HEAD POST OFFICE, VADAKARA AMSOM
DESOM, VADAKARA TALUK.

11. CHERUVALATH KELOTH JAYANTHI JAYAKRISHNAN
NO OCCUPATION, AGED 49 YEARS, RESIDING AT DAYA,
NEAR MUNICIPAL SCHOOL, KANNUR.

12. N.ABDUL KHADER, S/O.A.K.MOIDU,
AGED 46 YEARS, SARAS, THALASSERY TALUK,
KODIYERI AMSOM.

13. KUNNUMBRATH UMMER, S/O.AHAMMAD, AGED
39 YEARS, MERCHANT, KODIYERI AMSOM,
VAYALAM DESOM, THALASSERY TALUK,
KOZHIKODE DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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W.P.(C)NO.8331 OF 2007

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Dated this the 13th day of March 2007

JUDGMENT

The petitioner is the plaintiff in O.S.205/96 on the file of the Munsiff's Court, Vadakara wherein preliminary decree for partition had already been passed. On the objections of the first respondent to the report of the Commissioner effecting division of the properties, the commission report was remitted back to the Commissioner. I.A.1213/06 was filed by the petitioner before the court below to review the order remitting the commission report back to the Commissioner. The said petition was dismissed by the court below vide Ext.P2 order. It is submitted by counsel for the petitioner that I.A.1213/06 was being filed to review the order remitting the commission report back to the Commissioner for the reason that as per the Commission report an extent of 11.83 cents is allotted to the petitioner and what the petitioner wants is not to disturb the said allotment. It is submitted by counsel for the petitioner that the first respondent has already sold his share in the property, and that therefore there is no equity in favour of the transferee to have the plot being reallotted to his share.

2. It is not evident as to what were the objections raised by the

first respondent to have the commission report remitted back to the Commissioner. However, on such remission, as observed by the court below in Ext.P2 order, it does not mean that the contentions of the first respondent are accepted. If the Commissioner after revisit finds that there is no merit in the objection and that the allotment made at present is the most feasible manner in which shares can be allotted, he can report that aspect to the court. All the same, if at all there is any need to effect reallocation he can report that as well to the court and one of the sharers cannot object insisting that the plot allotted to him should not be altered when the commission report is remitted back on the objections of the one of the sharers. However, on furnishing the report the final decree court will consider the feasibility and pass appropriate orders. There is no reason why this writ petition is to be allowed setting aside Ext.P2 order and the proceedings in the final decree.

In the result, this writ petition is devoid of merit and is dismissed. It is made clear that in the event of a reallocation being made the petitioner also may be heard.

K.P.BALACHANDRAN, JUDGE

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